UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address COMMISSIONER FOR PATENTS
PO Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/447,023 | 11/22/1999 | MARTIN F. BERRY | 00414-046001 | 3274 |

26161 7590 06/12/2003

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON, MA 02110

| EXAMINER | |
|---|---|
| PRATT, HELEN F | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 1761 | 27 |

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) |
|---|---|---|
| | 09/447,023 | BERRY ET AL. |
| | Examiner | Art Unit |
| | Helen F. Pratt | 1761 |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *30 January 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *70,85,86,88-97 and 99-109* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *70, 85, 86, 88-97, 99-109* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

Claims 70, 85, 86, 88-97, 99-109 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No basis is seen for the phrase "wherein the juice component derived from cranberries having said anthocyanin content is the sole component from cranberries in the blend".

There is basis for the phrase "the blended juice has a citric acid content contributed substantially solely by the cranberries" (page 11, line 5). The problem with using this phrase is that it is not known what is meant by "substantially solely".

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 70, 85, 86, 88-97, 99-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiriboga et al.

The claims are rejected for the reasons of record cited in the last office action and for these further reasons. The obviousness statement is now changed to - It would have been obvious to make a colorless juice as disclosed by Chiriboga et al. because

Chiriboga et al. discloses that pale juices are known and shows an anthocyanin content of less than 10 % (Table 1) and it is known in general to make juices from various fruits which retain their natural characteristics.

ARGUMENTS

Applicant's arguments filed 1-30-03 have been fully considered but they are not persuasive. Applicants argue that Chiriboga does not disclose a cranberry juice containing less than 10 mg/100 ml of anthocyanin (Atc) or less and that it is erroneous to assume that the light juices of Chiriboga have the same characteristics as claimed. Especially, that Table 1 is interpreted as on page 3 of the Amendment and contains press juice and pigment. Even if the juices are combined as light and dark, this does not negate the fact that light juices are known as in "same (% of light juice) in Table 1. Applicants had previously amended the claims to require that the sole source of cranberry juice be from the light colored juice (less than 10 mg ATC per liter). The use of fruit juice is known, by itself or in blends, it would have been obvious to use only the light juice by itself, if one wanted a pale juice. The fact that the cranberry juice is pale is a characteristic of the particular fruit, which is true of the other juices, i. e. they maintain their natural color. Applicants do not claim that they have discovered light colored cranberries, and are therefore using known berries to make a juice, which is a known process.

Applicants argue that no prima facie case of obviousness has been made out. However, the various limitations have been shown or reasons why it would have been obvious to vary them have been stated.

Any inquiry concerning this communication should be directed to Helen F. Pratt at telephone number 703-308-1978.

Hp 6-10-03

H. Pratt

HELEN PRATT
PRIMARY EXAMINER